

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2013AP1394-CR
2013AP1395-CR**

**Cir. Ct. Nos. 2010CF46
2012CF80**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARREN A. AGNEW,

DEFENDANT-APPELLANT.

APPEAL from judgments and orders of the circuit court for Walworth County: JOHN R. RACE, Judge. *Affirmed.*

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. In these consolidated appeals, Darren Agnew appeals from a judgment convicting him of possessing cocaine with intent to deliver as party to the crime and from a judgment sentencing him after probation revocation for the same offense. Agnew also appeals from orders denying his

postconviction motion seeking resentencing. We conclude that the circuit court properly exercised its discretion at sentencing and properly declined to resentence Agnew. We affirm.

¶2 The circuit court made the following remarks at sentencing. Agnew had a “terrible record,” faced a substantial sentence due to the offenses and the amount of cocaine involved, Agnew appeared to be a crack dealer, and Agnew had failed on four previous probation terms. One of the possession counts was “aggravated by the sheer quantity” of cocaine involved. The court considered Agnew’s education and employment history. The court found that Agnew’s “real character, personality, and social traits are difficult to understand because of his continued use of controlled substances and his alcohol—alcohol violations.”

¶3 In imposing sentence, the court considered the gravity of the offenses, Agnew’s character and the need to protect the public. The court deemed “grave” the new drug offense, which Agnew committed while he was on probation for an earlier offense of the same type. The court imposed six years (three years of initial confinement and three years of extended supervision) for the sentencing after revocation drug offense and twelve years for the new drug offense (six years of initial confinement and six years of extended supervision), consecutive to the sentence after revocation.

¶4 Postconviction, Agnew sought resentencing because the circuit court misused its sentencing discretion and did not satisfy the requirements of *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. Agnew argued that the circuit court did not consider the need to protect the public or state a sentencing objective and that the circuit court’s sentencing rationale was insufficient. He

further complained that the court imposed eighteen years without stating why it did so.

¶5 At the postconviction motion hearing, the circuit court rejected Agnew’s arguments that its sentencing rationale violated *Gallion*. Agnew appeals.

¶6 On appeal, Agnew renews his argument that the circuit court failed to identify a sentencing objective or explain why it sentenced him to eighteen years. We agree with the State that the record permits a conclusion that the circuit court adequately explained its sentence.

¶7 In fashioning a sentence, a circuit court must consider various sentencing objectives and factors. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentencing objectives include protecting the community and punishing the defendant. *Id.* The primary sentencing factors are the gravity of the offense, the defendant’s character, and the need to protect the public. *Id.* The weight to be given the various factors is within the sentencing court’s discretion. *Id.* The court need only discuss those factors it finds relevant to the sentencing decision. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. As long as the sentencing court “considered the proper factors and the sentence was within the statutory limitations, the sentence will not be reversed unless it is so excessive as to shock the public conscience.” *State v. Owen*, 202 Wis. 2d 620, 645, 551 N.W.2d 50 (Ct. App. 1996).

¶8 Courts must explain the reasons for the particular sentence imposed. *Gallion*, 270 Wis. 2d 535, ¶39. “How much explanation is necessary, of course, will vary from case to case.” *Id.* We heed the *Gallion* court’s observation that “[t]he rule of law suffers when the sentencing judge’s discretion is unguided and

unchecked. The rationale for sentencing decisions must be made knowable and subject to review.” *Id.*, ¶51.

¶9 We conclude that the circuit court’s sentencing rationale is knowable and subject to review as required by *Gallion*. The court considered the relevant sentencing factors and objectives: Agnew’s character, the need to protect the public, and the need to incarcerate Agnew to protect the public. The court clearly saw the need for a lengthy term of punishment, and the eighteen-year sentence was well within the statutory limitations.¹ That the circuit court did not place greater weight on matters now urged on appeal is not a basis for reversing the circuit court. The court had the discretion to weigh the information before it, including the factors and objectives, as it saw fit. The court sufficiently explained its take on Agnew as it related to the exercise of its sentencing discretion. The sentence has “a ‘rational and explainable basis’” in the record. *Gallion*, 270 Wis. 2d 535, ¶76 (quoted source omitted).

By the Court.—Judgments and orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

¹ As a result of his convictions and his status as a repeat offender, Agnew faced forty-six years.

